

APPEAL NO. 040464
FILED APRIL 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 30, 2004. The hearing officer determined that because the appellant's (claimant) request for a hearing on the Independent Review Organization's (IRO) decision on a proposed spinal surgery was not received by the Chief Clerk of Proceedings of the Texas Workers' Compensation Commission (Commission) within 10 days of the receipt of the IRO decision, the request is not timely and the hearing officer lacks jurisdiction over the matter and, therefore, the IRO decision is the final decision and order of the Commission. The claimant appealed, asserting that his request was timely filed and that the IRO decision should not be final. The respondent (carrier) urged affirmance.

DECISION

Affirmed.

The hearing officer found that the claimant did not timely dispute the IRO decision by filing a written appeal pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308(v) (Rule 133.308(v)) within 10 days after receipt of the IRO decision. The hearing officer determined that the IRO decision was sent to the claimant on December 1, 2003, and by presumption, the claimant was deemed to have received the IRO decision 5 days later on December 6, 2003. See Rule 102.5(d). In order for the appeal to be timely, the claimant must file an appeal with the Commission within 10 days of receipt of the IRO decision. In evidence is a letter dated December 10, 2003, that purports to be the claimant's request for an appeal of the IRO decision. The hearing officer determined that the Commission received the claimant's written request for an appeal disputing the IRO decision on January 20, 2004. The hearing officer determined that the claimant failed to timely request a hearing regarding the IRO decision, and that she lacked jurisdiction to decide the matter. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **CLARENDON NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge